



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0402; FRL– 9797-6]

Approval and Promulgation of Implementation Plans; Mississippi; 110(a)(2)(E)(ii) Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve in part, and disapprove in part, the State Implementation Plan (SIP) submission, provided by the Mississippi Department of Environmental Quality (MDEQ), on October 11, 2012. This submission pertains to specific Clean Air Act (CAA) requirements for the 1997 annual and 2006 24-hour fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS) infrastructure SIPs. This action focuses on one component of the infrastructure requirements in the CAA. The CAA requires states to include provisions in their SIP to address conflicts of interest for state boards or bodies that approve CAA permits and enforcement orders and disclosure of conflict of interest requirements. Specifically, EPA is now approving the submission as it relates to the public interest requirements of CAA and the conflict of interest disclosure provisions. EPA is also now disapproving Mississippi's submission only as it pertains to compliance with the significant portion of income requirements of the CAA. Through this action, EPA is only taking action on the infrastructure SIP requirement related to Mississippi's obligation to address conflicts of interest requirements for state boards or bodies that approve CAA permits and enforcement

orders and disclosure of conflict of interest requirements. All other applicable Mississippi infrastructure elements for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS have been addressed through separate rulemakings. EPA is also taking action to finalize substantive SIP revisions included with MDEQ's October 11, 2012, submission.

EFFECTIVE DATE: This rule will be effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2012-0402. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can be reached via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

On July 18, 1997 (62 FR 38652), EPA promulgated a new annual PM_{2.5} NAAQS and on October 17, 2006 (71 FR 61144), EPA promulgated a new 24-hour PM_{2.5} NAAQS. Upon promulgation of a new or revised NAAQS, section 110(a) of the CAA requires states to submit SIPs providing for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter

period as EPA may prescribe. More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs, and section 110(a)(2) lists specific elements that states must meet for “infrastructure” SIP requirements related to a newly established or revised NAAQS. The section 110(a)(2) requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS.

Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. The data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state’s existing SIP already contains. For many of the section 110(a) requirements, states have typically met these basic program elements through earlier SIP submissions in connection with previous NAAQS.

Mississippi submitted a SIP revision on October 11, 2012, to address section 110(a)(2)(E)(ii) infrastructure requirements for both the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. On August 9, 2012, EPA proposed to approve in part, and disapprove in part, Mississippi’s infrastructure SIP submission addressing section 110(a)(2)(E)(ii).¹

Section 110(a)(2)(E)(ii) of the infrastructure SIP requires that states comply with the requirements respecting state boards provided at Section 128 of the CAA. Section 128, in turn, requires that states include provisions in their SIP to address conflicts of interest for state boards

¹ EPA took action on Mississippi’s other applicable infrastructure SIP requirements in a separate rulemaking. See 77 FR 61276.

or bodies that approve CAA permits and enforcement orders and to address disclosure of conflict of interest requirements. Specifically, CAA section 128(a)(1) necessitates that each SIP shall require that at least a majority of any board or body which approves permits or enforcement orders be subject to public interest service and income restrictions. Section 128(a)(2) requires that the members of any board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements.

In addition to the above-described proposed partial approval and partial disapproval of Mississippi's infrastructure SIP submission addressing section 110(a)(2)(E)(ii), EPA also proposed to approve certain sections of the Mississippi Constitution and Mississippi Code into the SIP. Specifically, EPA proposed to approve Mississippi's Article 4, Section 109 of the Mississippi Constitution and portions of Mississippi Code sections 25-4-25, -27, -29, -101, -103, and -105 into the Mississippi SIP. These SIP revisions satisfy certain conflict of interest requirements of section 128, which as described above, are required as part of the state's infrastructure SIP per section 110(a)(2)(E)(ii). More information on these specific provisions is provided in the proposed rule for today's action (77 FR 47573) and in the state's October 11, 2012, final SIP revision which is available in the docket for today's action.

II. This Action

EPA is taking final action to approve Article 4, Section 109 of Mississippi Constitution and portions of Mississippi Code sections 25-4-25, -27, -29, -101, -103, and -105 into the Mississippi SIP pursuant to section 128 of the CAA. The specific provisions for inclusion in the Mississippi SIP are described more fully in the State's October 11, 2012, final SIP revision which is available in the docket for today's action.

EPA is also taking final action to approve in part Mississippi's 110(a)(2)(E)(ii) infrastructure submission as it relates to the public interest requirements of CAA section 128(a)(1) and the conflict of interest disclosure provisions of section 128(a)(2). EPA is disapproving Mississippi's section 110(a)(2)(E)(ii) submission only as it pertains to compliance with the significant portion of income requirements of section 128(a)(1) of the CAA. See the August 9, 2012, proposed rule for EPA's analysis of Mississippi's 110(a)(2)(E)(ii) submission. (77 FR 47573). The 110(a)(2)(E)(ii) proposed actions were contingent upon Mississippi providing EPA with a final SIP revision that was not changed significantly from the July 13, 2012, draft revision. Mississippi provided its final SIP revision on October 11, 2012. There were no significant changes made to the final submittal. EPA received no comments on its August 9, 2012, proposed partial approval and partial disapproval of Mississippi's draft SIP revision addressing section 110(a)(2)(E)(ii).

Although EPA is taking action to disapprove a portion of Mississippi's 110(a)(2)(E)(ii) submission, the Agency notes that Mississippi has submitted a number of SIP revisions that are being determined adequate for approvability regarding the requirements of section 128. For

example, Mississippi Code Section 25-4-105 precludes all public servants from using his or her official position to obtain, or attempt to obtain, pecuniary benefit for him- or herself other than that compensation provided for by law, or to obtain, or attempt to obtain, pecuniary benefit for any relative or any business with which he or she is associated. In addition, this section prevents board members from performing any service for any compensation during their term by which they attempt to influence a decision of the authority of the board. EPA interprets these requirements, once incorporated into the SIP, as demonstrating that Mississippi meets the section 128(a)(1) requirements respecting public interest.

EPA also notes that the public policy declared by the Mississippi Legislature in Mississippi Code Annotated section 25-4-101, which is being approved into the SIP today, in large part comports with the intent behind the CAA section 128 requirements.²

III. Final Action

As already described, EPA is taking final action to approve in part Mississippi's October 11, 2012, submission for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS addressing section 110(a)(2)(E)(ii) infrastructure requirements as it relates to the public interest requirements of CAA section 128(a)(1) and the conflict of interest disclosure provisions of section 128(a)(2).

² Section 25-4-101 provides that the Mississippi Legislature "declares that elective and public office and employment is a public trust and any effort to realize personal gain through official conduct, other than as provided by law, or as a natural consequence of the employment or position, is a violation of that trust. Therefore, public servants shall endeavor to pursue a course of conduct which will not raise suspicion among the public that they are likely to be engaged in acts that are in violation of this trust and which will not reflect unfavorably upon the state and local governments."

EPA is disapproving Mississippi's section 110(a)(2)(E)(ii) submission as it pertains to compliance with the significant portion of income requirements of section 128(a)(1) of the CAA.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a Part D Plan (42 U.S.C. sections 7501-7515) or is required in response to a finding of substantial inadequacy as described in section 7410(k)(5) (SIP call) starts a sanctions clock. Section 110(a)(2)(E)(ii) provisions (the significant portion of income requirements of section 128(a)(1) being disapproved in today's notice) were not submitted to meet requirements for Part D, and therefore, no sanctions will be triggered. This partial disapproval action, however, does trigger the requirement under section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the disapproval unless the state corrects the deficiency and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP.

In addition, to the above actions respecting 110(a)(2)(E)(ii) infrastructure requirements, EPA is today also approving into the SIP the revisions related to section 128 submitted by Mississippi on October 11, 2012. Specifically, EPA is approving Article 4, Section 109 of Mississippi Constitution and portions of Mississippi Code sections 25-4-25, -27, -29, -101, -103, and -105 into the Mississippi SIP.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves in part state

law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law, and disapproves in part state law because it does not fully meet federal requirements. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or

action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 27, 2013.

A. Stanley Meiburg,

Acting Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Z—Mississippi

2. Section 52.1270 is amended by:

a. In paragraph (c), adding an entry under the new heading “Mississippi State Constitution” and six entries under the new heading “Mississippi Code” at the end of the table.

b. In paragraph (e), adding a new entry for “110(a)(2)(E)(ii) Infrastructure Requirement for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards” at the end of the table.

The additions read as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) * * *

EPA-Approved Mississippi Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Mississippi State Constitution				
Article 4	Interest of Public	9/27/2012	[Insert	

Section 109	Officers in Contracts		date of publication in <u>Federal Register</u> [Insert citation of publication]	
Mississippi Code				
Section 25-4-25	Persons required to file statement of economic interest	9/27/2012	[Insert date of publication in <u>Federal Register</u> [Insert citation of publication]	
Section 25-4-27	Contents of statement of economic interest	9/27/2012	[Insert date of publication in <u>Federal Register</u> [Insert citation of publication]	
Section 25-4-29	Filing dates for statement	9/27/2012	[Insert date of publication in <u>Federal Register</u> [Insert citation of publication]	
Section 25-4-101	Declaration of public policy	9/27/2012	[Insert date of publication in <u>Federal Register</u> [Insert citation of publication]	
Section 25-4-103	Definitions	9/27/2012	[Insert date of publication in <u>Federal Register</u> [Insert citation of	

			publication]	
Section 25-4-105	Certain actions, activities and business relationships prohibited or authorized; contacts in violation of section voidable; penalties	9/27/2012	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	

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(e) * * *

EPA-Approved Mississippi Non-Regulatory Provisions

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	*	*	*
110(a)(2)(E)(ii) Infrastructure Requirement for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards	Mississippi	10/11/2012	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	EPA disapproved the State's 110(a)(2)(E)(ii) as it relates to section 128(a)(2), the significant portion of income requirement.

3. Section 52.1278 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.1278 Control strategy: Sulfur oxides and particulate matter.

* * * * *

(b) *Disapproval.* EPA is disapproving portions of Mississippi's Infrastructure SIP for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS addressing section 110(a)(2)(E)(ii) that requires the State to comply with section 128 of the CAA.

[FR Doc. 2013-07975 Filed 04/05/2013 at 8:45 am; Publication Date: 04/08/2013]